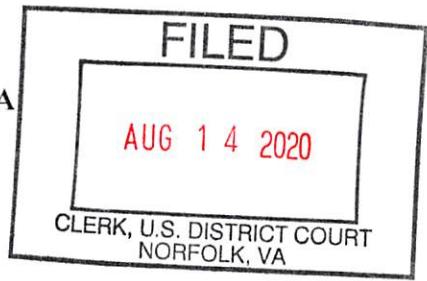


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

HAL DEAN MCBRIDE, #08066-025,



Petitioner,

v.

ACTION NO. 2:19cv608

MARK J. BOLSTER,
Acting Warden,

Respondent.

FINAL ORDER

The Court has received and filed a petition for a writ of habeas corpus submitted pursuant to 28 U.S.C. § 2241. ECF No. 1. Petitioner, a federal prisoner convicted and sentenced in the Southern District of Illinois, and housed in the Federal Correctional Center in Petersburg, Virginia, brings this petition under the savings clause of 28 U.S.C. § 2255(e). *Id.* at 6. Petitioner is seeking to have the sentence imposed for his violation of supervised release vacated, and to be resentenced with consideration given to *United States v. Haymond*, 139 S. Ct. 2369 (2019). *Id.* at 1–2, 10.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and recommendation, filed June 30, 2020, recommends that respondent's motion to dismiss the petition, ECF No. 4, be granted, and the petition for a writ of habeas corpus, ECF No. 1, be denied and dismissed without prejudice for lack of jurisdiction. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. No objections have been filed,

and the time to do so has expired.

The Court, having reviewed the record, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss the petition, ECF No. 4, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

McBride has failed to demonstrate "a substantial showing of the denial of a constitutional right," and, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 327, 335–36 (2003).

McBride is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If McBride intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Final Order. McBride may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall forward a copy of this final order to McBride and counsel of record for respondent.



Arenda L. Wright Allen
United States District Judge

Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia
August 14, 2020